

UNITED STATES BANKRUPTCY COURT

Southern

District of

Texas

In re Professional Fee Matters Concerning the Jackson Walker Law Firm

Debtor

(Complete if issued in an adversary proceeding)

Case No. 23-00645 (EVR)

Chapter

Plaintiff

v.

Adv. Proc. No.

Defendant

SUBPOENA TO APPEAR AND TESTIFY  
AT A HEARING OR TRIAL IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: David R. Jones

(Name of person to whom the subpoena is directed)

☒ **YOU ARE COMMANDED** to appear in the United States Bankruptcy Court at the time, date, and place set forth below to testify at a hearing or trial in this bankruptcy case (or adversary proceeding). When you arrive, you must remain at the court until the judge or a court official allows you to leave.

PLACE United States Bankruptcy Court  
515 Rusk Avenue  
Houston, Texas 77002

COURTROOM 8B

DATE AND TIME May 12, 2025, 8:30 a.m.  
continuing through May 30, 2025, or as otherwise ordered by the Court.

You must also bring with you the following documents, electronically stored information, or objects (leave blank if not applicable):

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: April 3, 2025

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

  
Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party)  
Jackson Walker LLP, who issues or requests this subpoena, are:

Emily Smith, Rusty Hardin & Associates, LLP, 1401 McKinney Street, Suite 2250, Houston, Texas 77010

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

**PROOF OF SERVICE**

**(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)**

I received this subpoena for *(name of individual and title, if any)*: \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information concerning attempted service, etc.:

**Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)**  
**(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)**

**(c) Place of compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

(A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises, at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...  
(g) **Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it

## **EXHIBIT A**

### ***Written Statement Required by Guide to Judiciary Policy, Volume 20, § 830(a)***

#### **I. Nature of testimony sought**

Jackson Walker LLP intends to take testimony on the following topics:

1. Any topic listed by the United States Trustee in its Exhibit A “Testimony Topics” to the *Subpoena to Appear and Testify at a Hearing or Trial in a Bankruptcy Case (or Adversary Proceeding)* directed to David Jones and approved by the Court.

#### **II. Relevance and necessity of testimony sought**

The Office of the U.S. Trustee (“U.S. Trustee”) has, in 33 separate cases either presided over by Judge Jones or mediated by former Judge Jones, sought relief under Rule 60(b)(6) of the Federal Rules of Civil Procedure (1) vacating orders approving Jackson Walker’s applications for retention and for compensation and expenses and, (2) sanctioning Jackson Walker by ordering the return of all fees and expenses previously paid to the firm. The crux of the U.S. Trustee’s argument is that the undisclosed intimate relationship between former Judge Jones and Ms. Freeman significantly compromised the integrity of and public faith in the bankruptcy system and, accordingly, tainted these cases and damaged the administration of the various bankruptcy estates by creating an unlevel playing field for parties, who might have sought recusal of former Judge Jones, objected to the retention of Jackson Walker, or sought other appropriate relief had the fact of their relationship been known. The U.S. Trustee argues that sanctions against Jackson Walker are appropriate because its attorneys failed to disclose the relationship between former Judge Jones and Ms. Freeman. Jackson Walker has disputed these allegations.

Testimony on the above-listed topics is relevant to this litigation because the crux of the U.S. Trustee’s position is that individuals at Jackson Walker knew of the relationship between Ms. Freeman and former Judge Jones and that the relationship should have been disclosed both by Jackson Walker and former Judge Jones. Jackson Walker believes that testimony by former Judge Jones will shed light on the crucial issue of whether anyone at Jackson Walker (aside from Ms. Freeman) was aware of the relationship between former Judge Jones and Ms. Freeman. Moreover, Jackson Walker believes that testimony from former Judge Jones is necessary to show that Jackson Walker’s popularity as local counsel was not due to any favoritism shown by former Judge Jones to Jackson Walker (and instead was a result of Jackson Walker’s substantial efforts to form and strengthen relationships with large law firms that had no significant Houston bankruptcy presence, and to advocate for the Southern District of Texas by emphasizing the benefits of the complex case panel, the quality of the judges in the Southern District of Texas, and the excellence of the local bar). All of the above-described testimony is available solely from former Judge Jones. Only former Judge Jones knows who, if anyone, he told about his relationship with Ms. Freeman, only former Judge Jones knows why he ruled the way he did and whether his rulings were attributable to a bias towards Jackson Walker. Likewise, testimony regarding why former Judge Jones concluded that he did not have to disclose his relationship with Ms. Freeman is only available from former Judge Jones. As such, the testimony sought is not only highly relevant to this litigation, but also not readily available from other sources or by other means.

### **III. Factors to be considered by the determining officer in authorizing the testimony**

The determining officer should authorize the testimony of Judge Jones based on the following factors:

1. Former Judge Jones resigned from his judicial position and therefore no resources of the United States or time of federal judicial personnel will be expended in Jackson Walker's taking of former Judge Jones's testimony.
2. Former Judge Jones's testimony will not aid or hinder the federal judiciary in the performance of official duties.
3. Former Judge Jones's testimony is necessary to prevent the perpetration of injustice, as the U.S. Trustee has alleged that the undisclosed intimate relationship between former Judge Jones and Ms. Freeman significantly compromised the integrity of and public faith in the bankruptcy system.
4. The request is not unduly burdensome or inappropriate under applicable court or administrative rules.
5. The testimony is appropriate under the rules of procedure governing this case, as well as the scheduling order entered in this case.
6. Jackson Walker is properly authorized to make the request.
7. Jackson Walker's request meets the requirements of the regulations established by the Guide to Judiciary Policy, Volume 20, § 830(a).
8. Jackson Walker properly served the request under applicable court, administrative, and other rules.
9. Former Judge Jones's testimony would not violate a statute, regulation, or ethical rule.
10. Former Judge Jones's testimony on the topics set forth herein would not disclose information regarding the exercise of judicial or quasi-judicial responsibilities by federal judicial personnel in the decisional or deliberative process, except to the extent that former Judge Jones testifies on his judicial obligations related to disqualification, recusal, and disclosure.
11. Former Judge Jones's testimony would not disclose confidential information from or pertaining to a presentence investigation report or pertaining to an individual's probation, parole, or supervised release, and would not disclose any other information that is confidential under any applicable statute or regulation.
12. Former Judge Jones's testimony is not reasonably expected to result in the appearance of the federal judiciary favoring one litigant over another, or endorsing or supporting a position advanced by a litigant.

13. Former Judge Jones's testimony on the topics set forth herein is not available from other sources.
14. Former Judge Jones's testimony is not sought as expert witness testimony.
15. The request does not seek personnel files, records, or documents pertaining to a current or former federal judicial officer or employee.

## Guide to Judiciary Policy

Vol. 20: Administrative Claims and Litigation

### Ch. 8: Testimony and Production of Records

#### [§ 810 Overview](#)

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### § 810 Overview

#### § 810.10 Purpose

- (a) These regulations establish policy, assign responsibilities and prescribe procedures with respect to:
  - (1) the production or disclosure of official information or records by the federal judiciary; and
  - (2) the testimony of present or former judiciary personnel relating to any official information acquired by any such individual as part of that individual's performance of official duties, or by virtue of that individual's official status, in federal, state, or other legal proceedings covered by these regulations.
- (b) The purpose of these regulations is, among other things, to:
  - (1) conserve the time of federal judicial personnel for conducting official business;
  - (2) minimize the involvement of the federal judiciary in issues unrelated to its mission;



- (3) maintain the impartiality of the federal judiciary in disputes between private litigants;
- (4) avoid spending the time and money of the United States for private purposes; and
- (5) protect confidential and sensitive information and the deliberative processes of the federal judiciary.

## § 810.20 Authority

Adopted by the Judicial Conference of the United States in March 2003 ([JCUS-MAR 03](#), p. 9), these regulations are promulgated under the authority granted the Director of the Administrative Office of the U.S. Courts (AO), under the supervision and direction of the Conference, to:

- (a) “[s]upervise all administrative matters relating to the offices of clerks and other clerical and administrative personnel of the courts” ([28 U.S.C. § 604\(a\)\(1\)](#));
- (b) “[p]erform such other duties as may be assigned to him by. . .the Judicial Conference of the United States” ([28 U.S.C. § 604\(a\)\(24\)](#));
- (c) “make, promulgate, issue, rescind, and amend rules and regulations. . .as may be necessary to carry out the Director’s functions, powers, duties, and authority” ([28 U.S.C. § 604\(f\)](#)); and
- (d) “delegate any of the Director’s functions, powers, duties, and authority. . . to such officers and employees of the judicial branch of Government as the Director may designate” ([28 U.S.C. § 602\(d\)](#)).

§ 810.30 Definitions	
Information or records	All information, records, documents, or materials of any kind, however stored, that are in the custody or control of the federal judiciary or were acquired by federal judicial personnel in the performance of their official duties or because of their official status.
Judicial personnel	All present and former officers and employees of the federal judiciary and any other individuals who are or have been appointed by, or subject to the supervision, jurisdiction, or control of, the federal judiciary, including individuals hired through contractual agreements by or on behalf of the federal judiciary, or performing services under such agreements for the federal judiciary, such as consultants, contractors, subcontractors, and their employees and personnel. This phrase also includes alternative dispute resolution neutrals or mediators, special masters, individuals who have served and are serving on any advisory committee or in any advisory capacity, and



<b>§ 810.30 Definitions</b>	
	any similar personnel performing services for the federal judiciary.
Legal proceedings	All pretrial, trial, and post-trial stages of all existing or anticipated judicial or administrative actions, hearings, investigations, cases, controversies, or similar proceedings, including grand jury proceedings, before courts, agencies, commissions, boards or other tribunals, foreign and domestic, or all legislative proceedings pending before any state or local body or agency, other than those specified in <a href="#">§ 810.40(b)</a> .
Request	An order, subpoena, or other demand of a court, or administrative or other authority, of competent jurisdiction, under color of law, or any other request by whatever method, for the production, disclosure, or release of information or records by the federal judiciary, or for the appearance and testimony of federal judicial personnel as witnesses as to matters arising out of the performance of their official duties, in legal proceedings. This definition includes requests for voluntary production or testimony in the absence of any legal process.
Testimony	Any written or oral statement in any form by a witness arising out of the performance of the witness' official duties, including personal appearances and statements in court or at a hearing or trial, depositions, answers to interrogatories, affidavits, declarations, interviews, telephonic, televised, or videotaped remarks, or any other response during discovery or similar proceedings that would involve more than production of documents.

### § 810.40 Applicability

- (a) These regulations apply to all components and personnel of the federal judiciary, except the following agencies and their personnel:
- Supreme Court of the United States,
  - Federal Judicial Center, and
  - United States Sentencing Commission.
- (b) These regulations **do not** apply to:
- (1) Legal proceedings in which the federal judiciary or a court or office of the federal judiciary is a party.
  - (2) Legal proceedings, arising out of the performance of official duties by federal judicial personnel, in which federal judicial personnel are parties.
  - (3) Legal proceedings in which federal judicial personnel are to testify while in leave or off-duty status as to matters that do not arise out of the performance of official duties. (**Note:** These regulations do

not seek to deny federal judicial personnel access to the courts as citizens in their private capacities on off-duty time.)

- (4) Congressional requests for testimony or documents.
- (5) Requests governed by the garnishment regulations in Guide, Vol. 20, Ch. 5.
- (6) Proceedings conducted under the Judicial Conduct and Disability Act, [28 U.S.C. §§ 351-364](#), under the authority conferred on the judicial councils of the respective federal judicial circuits by [28 U.S.C. § 332](#), or under the authority conferred on the Judicial Conference of the United States by [28 U.S.C. § 331](#).
- (7) Requests by members of the public, when properly made through the procedures established by a court for that purpose, for records or documents, such as court files or dockets, routinely made available to members of the public for inspection or copying.

## § 820 Testimony and Production of Records

- (a) Federal judicial personnel may not provide testimony or produce records in legal proceedings except as authorized in accordance with these regulations.
- (b) Testimony may be taken from federal judicial personnel only at the federal judicial personnel's place of business, or at any other place authorized by the determining officer designated in [§ 840\(b\)](#). Additional conditions may be specified by the determining officer. The time for such testimony should be reasonably fixed so as to avoid substantial interference with the performance of official duties by federal judicial personnel.
- (c) Nothing in these regulations should restrict in any way any defenses, objections, or privileges that may be asserted by federal judicial personnel in response to a request.
- (d) These regulations are not intended to, and do not:
  - (1) waive the sovereign immunity of the United States; or
  - (2) infringe upon or displace the responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States in appropriate cases.
- (e) These regulations are intended only to govern the internal operation of the federal judiciary and are not intended to create, do not create, and may

not be relied upon to create any right or benefit, substantive or procedural, enforceable in law or equity against the United States or against the federal judiciary or any court, office, or personnel of the federal judiciary.

## **§ 830 Contents and Timeliness of a Request**

- (a) The request for testimony or production of records must set forth, or must be accompanied by an affidavit setting forth, a written statement by the party seeking the testimony or production of records, or by counsel for the party, containing:
- an explanation of the nature of the testimony or records sought,
  - the relevance of the testimony or records sought to the legal proceedings, and
  - the reasons why the testimony or records sought, or the information contained therein, are not readily available from other sources or by other means.
- (1) This explanation must contain sufficient information for the determining officer designated in [§ 840\(b\)](#) to determine whether or not federal judicial personnel should be allowed to testify or the records should be produced.
- (2) Where the request does not contain an explanation sufficient for this purpose, the determining officer may deny the request or may ask the requester to provide additional information.
- (b) The request for testimony or production of records, including the written statement required by § 830(a), must be provided to the federal judicial personnel from whom testimony or production of records is sought at least 15 working days in advance of the time by which the testimony or production of records is to be required. Failure to meet this requirement will provide a sufficient basis for denial of the request.
- (c) The determining officer designated in [§ 840\(b\)](#) has the authority to waive the requirements of this section (i.e., § 830) in the event of an emergency under conditions which the requester could not reasonably have anticipated and which demonstrate a good faith attempt to comply with the requirements of these regulations. In no circumstance, however, is a requester entitled to consideration of an oral or untimely request. To the contrary, whether to permit such an exceptional procedure is a decision within the sole discretion of the determining officer.

## § 840 Identity of Determining Officer

- (a) Federal judicial personnel may not, in response to a request for testimony or the production of records in legal proceedings, comment, testify, or produce records without the prior approval of the determining officer designated below in § 840(b).
- (b) The determining officer authorized to make determinations under these regulations will be as follows:
- (1) In the case of a request directed to a federal court of appeals judge, district judge, Court of International Trade judge, Court of Federal Claims judge, bankruptcy judge, or magistrate judge, or directed to a current or former member of such a judge's personal staff (such as a judge's secretary, law clerk), the determining officer will be the federal court of appeals judge, district judge, Court of International Trade judge, Court of Federal Claims judge, bankruptcy judge, or magistrate judge himself or herself.
  - (2) In the case of a request directed to a former federal court of appeals judge, district judge, Court of International Trade judge, Court of Federal Claims judge, bankruptcy judge, or magistrate judge, or directed to a former member of a former judge's personal staff who is no longer a court employee and thus is not covered by § 840(b)(1) or (b)(3), the determining officer will be the chief judge of the court on which the former judge previously served.
  - (3) In the case of a request directed to an employee or former employee of a court office (other than an employee or former employee covered by § 840(b)(1), such as the office of the clerk of court, the office of the circuit executive, the staff attorneys' and/or preargument attorneys' office, the probation and/or pretrial services office, and the office of the federal public defender, the determining officer will be the unit head of the particular office, such as the:
    - clerk of court,
    - circuit executive,
    - senior staff attorney,
    - chief probation officer,
    - chief pretrial services officer, or
    - federal public defender.

**Note:** In these instances, the determining officer (except the federal public defender, as provided below) should, as provided by local rule or order, consult with the chief judge of the court served by the particular office regarding the proper response to a request.

The federal public defender, in the case of a request related to the defender office's administrative function (but not requests related to the defender office's provision of representation pursuant to the Criminal Justice Act, [18 U.S.C. § 3006A](#), and related statutes), should, as provided by local rule or order, consult with the chief judge of the court of appeals that appoints the federal public defender regarding the proper response to such a request.

- (4) In the case of a request directed to an employee or former employee of the AO, the determining officer will be the AO's General Counsel.
- (5) In the case of a request not specified in subsections (1) through (4) above (such as a request made to federal judicial personnel as defined in [§ 810.30 \("judicial personnel"\)](#) who are not current or former judges or their staff, employees of a court office, or employees of the AO), the determining officer will be the officer designated to serve as the determining officer by the chief judge of the court served by the recipient of the request. In these instances, the determining officer (if someone other than the chief judge of the relevant court) should, if the circumstances warrant, consult with the chief judge of the relevant court regarding the proper response to a request.

## **§ 850 Procedure When Request Is Made**

- (a) In response to a request for testimony or the production of records by federal judicial personnel in legal proceedings covered by these regulations, the determining officer may determine:
  - whether the federal judicial personnel may be interviewed, contacted, or used as witnesses, including as expert witnesses, and
  - whether federal judicial records may be produced, and what, if any conditions will be imposed upon such interview, contact, testimony, or production of records.

The determining officer may deny a request if the request does not meet any requirement imposed by these regulations.

In determining whether or not to authorize the disclosure of federal judicial information or records or the testimony of federal judicial personnel, the determining officer will consider, based on the following factors, the effect in the particular case, as well as in future cases generally, which testifying

or producing records will have on the ability of the federal judiciary or federal judicial personnel to perform their official duties.

- (1) The need to avoid spending the resources of the United States for private purposes, to conserve the time of federal judicial personnel for the performance of official duties, and to minimize the federal judiciary's involvement in issues unrelated to its mission.
- (2) Whether the testimony or production of records would assist the federal judiciary in the performance of official duties.
- (3) Whether the testimony or production of records is necessary to prevent the perpetration of fraud or injustice in the case or matter in question.
- (4) Whether the request is unduly burdensome or is inappropriate under applicable court or administrative rules.
- (5) Whether the testimony or production of records is appropriate or necessary under the rules of procedure governing the case or matter in which the request arises, or under the relevant substantive law of privilege.
- (6) Whether the request is within the proper authority of the party making it.
- (7) Whether the request meets the requirements of these regulations.
- (8) Whether the request was properly served under applicable court, administrative, or other rules.
- (9) Whether the testimony or production of records would violate a statute, regulation, or ethical rule.
- (10) Whether the testimony or production of records would disclose information regarding the exercise of judicial or quasi-judicial responsibilities by federal judicial personnel in the decisional or deliberative process.
- (11) Whether the testimony or production of records would disclose confidential information from or pertaining to a presentence investigation report or pertaining to an individual's probation, parole, or supervised release, or would disclose any other information that is confidential under any applicable statute or regulation.

- (12) Whether the testimony or production of records reasonably could be expected to result in the appearance of the federal judiciary favoring one litigant over another, or endorsing or supporting a position advocated by a litigant.
  - (13) Whether the request seeks testimony, records or documents available from other sources.
  - (14) Whether the request seeks testimony of federal judicial personnel as expert witnesses.
  - (15) Whether the request seeks personnel files, records or documents pertaining to a current or former federal judicial officer or employee, and
    - (A) the personnel files, records or documents sought by the request may be obtained from the current or former federal judicial officer or employee in question, or
    - (B) the personnel files, records or documents sought by the request would be made available to the requester with the written consent or authorization of the current or former federal judicial officer or employee in question.
  - (16) Any other consideration that the determining officer designated in [§ 840\(b\)](#) may consider germane to the decision.
- (b) Federal judicial personnel upon whom a request for testimony or the production of records in legal proceedings is made should promptly notify the determining officer designated in [§ 840\(b\)](#). If the determining officer determines, upon consideration of the requirements of these regulations and the factors listed in [§ 850\(a\)](#), that the federal judicial personnel upon whom the request was made should not comply with the request, the federal judicial personnel upon whom the request was made should notify the requester of these regulations and must respectfully decline to comply with the request. In appropriate circumstances federal judicial personnel may — through the Department of Justice, or with the assistance of retained legal counsel if the Department of Justice is unavailable — file a motion, before the appropriate court or other authority, to quash such a request or to obtain other appropriate relief.
- (c) If, after federal judicial personnel have received a request in a legal proceeding and have notified the determining officer in accordance with this section, a response to the request is required before instructions from the determining officer are received, federal judicial personnel should notify the requester of these regulations and inform the requester that the



request is under review pursuant to these regulations. If necessary, federal judicial personnel may — through the Department of Justice, or with the assistance of retained legal counsel if the Department of Justice is unavailable — seek a stay of the request pending a final determination by the determining officer, or seek other appropriate relief.

- (d) If, in response to action taken under § 850(c), a court of competent jurisdiction or other appropriate authority declines to stay the effect of a request pending a determination by the determining officer, or if such court or other authority orders that the request be complied with notwithstanding the final decision of the determining officer, the federal judicial personnel upon whom the request was made must notify the determining officer and must comply with the determining officer's instructions regarding compliance with the order or request. Unless and until otherwise instructed by the determining officer, however, the federal judicial personnel upon whom the request was made must respectfully decline to comply with the order or request. *See United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).